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ANDERSON, FOLASHADE

ART UNIT	PAPER NUMBER
3623	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

	Application No.	Applicant(s)
Office Action Summary	10/615,157	PELLETIER, OLIVIER
	Examiner	Art Unit
	FOLASHADE ANDERSON	3623

-- *The MAILING DATE of this communication appears on the cover sheet with the correspondence address* --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS,
WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed
  after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any
  earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on <u>11 April 2008</u>.

2a)☐ This action is **FINAL.**   2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is
closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) <u>1-17</u> is/are pending in the application.

  4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) <u>1-17</u> is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

  Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

  Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

  a)☒ All b)☐ Some * c)☐ None of:

    1.☒ Certified copies of the priority documents have been received.

    2.☐ Certified copies of the priority documents have been received in Application No. _____.

    3.☐ Copies of the certified copies of the priority documents have been received in this National Stage
      application from the International Bureau (PCT Rule 17.2(a)).

  * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☒ Notice of References Cited (PTO-892)
2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3)☐ Information Disclosure Statement(s) (PTO/SB/08)
  Paper No(s)/Mail Date _____.

4)☐ Interview Summary (PTO-413)
  Paper No(s)/Mail Date. _____
5)☐ Notice of Informal Patent Application
6)☐ Other: _____.

U.S. Patent and Trademark Office
PTOL-326 (Rev. 08-06)   **Office Action Summary**   Part of Paper No./Mail Date 20080703

DETAILED ACTION

1.   This is the second non-final office action in response to Applicant's submission filed on April 11, 2008. Currently, claims 1- 17 are pending. Claims 2, 6, 8, and 15 have been amended.

2.   Examiner acknowledger's Applicant's response to the Requirement for Information under 37 CFR § 1.105.

Response to Amendment

3.   Applicant's amendment to the title is sufficient to overcome the title objection set forth in the previous office action.

4.   Applicant's has failed to amend claims 2,5 and 7 in a manner sufficient to overcome the claims object set forth in the previous action therefore the object stands a in part as previously presented.

5.   Applicant's amendments to claim 6 and 15 are sufficient to overcome the claims objection set fourth in the previous office action.

Response to Arguments

6.   Applicant's arguments, with respect to 35 USC § 112 have been fully considered and are persuasive.   The 35 USC § 112 with regards to claims 2, 5, and 7 of the previous office action has been withdrawn.

7.   Applicant's arguments filed April 11, 2008 with respect to Juergens (US Patent 5,200,909) in view of Hillier et al (Introduction to Operations Research, published 01/1995) have been fully considered but they are not persuasive.

In the remarks and arguments, Applicant argues that the prior art does not teach or suggest (1) specifically with regards to Juergens, claim 1, the step of storing for each of a set of products chosen among products for which a database includes smell or taste prints constituted by a set of measurements given by smell or taste electronic sensors, a satisfaction note rating (SN) given by the user, (2) specifically with regards to Juergens, claim 1, automatically calculating weighting coefficients constituting said profile and respectively affected to said sensors measurements, by successive approximation of set of weighting coefficients,   (3) specifically with regards to Hillier, claim 1,   the step of minimizing the sum of the quadratic errors over the set of satisfaction notes, (4) specifically with regards to Juergens, claim12, a memory element for storing a user rating of each of a set of products chosen among the products contained in said database, and (5) specifically with regards to Juergens, claim12, a calculator for determining weighting coefficients constituting said profile and respectively affected to said sensors, by successive approximation of sets of weighting coefficients.

In response to argument (1), Examiner respectfully disagrees.   Juergens teaches the storing of various characteristics (prints) with regards to a specific wine, see figure 1. The characteristics of Juergens are determined using laboratory evaluations (electronic sensors), see col. 4 lines 23-64. Juergens expressly teaches an inventory wine database for storing the determined wine characteristics, see col. 11 lines 66-68. While it is true in the invention of Juergens the specification example given allows the user rates one wine rather than a set of wines (products) it has been held that duplication of effort to yield a predictable variation is not patentably significant, see In re Harza, 124 USPQ 378 (CCPA 1960). Additionally Juergens teaches preference scores (satisfaction note ratings), see col. 10 lines 56-66. As such it is the Examiner's opinion that the limitation in question are implied in and taught by Juergens.

In response to argument (2), Examiner respectfully disagrees.   Applicant has misinterpreted Juergens; while it is true that literature and studies are used by Juergens it is not to determine the Cx. The studies and literature are only used to establish the ranges of the rating scales. The laboratory chemical analysis determines where a wine is placed on the established scale, see col.11 lines 63-65. The program of Juergens automatically determines score (weighting) see col. 11 lines 44-68 and col. 12 lines 1-5. Given the broadest reasonable interpretation the user profile is created with the answering of any questions in the invention of Juergens which allows the program to recommend a wine based on the user's input.   As such it is the Examiner's opinion that the limitation in question are implied in and taught by Juergens

In response to argument (3), Examiner respectfully disagrees. Hiller teaches a method for minimizing error in linear program, see pg. 500-502, as well as the best fitted line in the method of identifying linear least squares method, pg. 820-826, as such the steps minimizing the sum of the quadratic error is implied in the solution. It would have been obvious to one of ordinary skill in the art at the time the invention was made to include the invention of Juergens the minimizing the sum of the quadratic errors as taught by Hiller since the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable. As such it is the Examiner's opinion that the limitation in question are implied in and taught by Juergens in view of Hiller.

In response to argument (4), Examiner respectfully disagrees. Juergens teaches at least the storing (memory element) of the user's selected preferences (profile) temporary to allow the program to run the comparison against the inventoried wine database, see col. 12, lines 65-68 and col. 13 lines 1-5). As such it is the Examiner's opinion that the limitation in question are implied in and taught by Juergens

In response to argument (5), Examiner respectfully disagrees. Juergens teaches a computer program for calculating the score (weight) as such it implies a computer processor (calculator). As such it is the Examiner's opinion that the limitation in question are implied in and taught by Juergens.

Further Examiner notes that the applicant did not challenge the officially cited facts in the previous office action(s) therefore those statements as presented are herein

after prior art.   Specifically it has been established that it was old and well known in the art at the time of the invention that:

- Electronic sensors are tools used in laboratory measurements, as per claim 1

- Scaling or weight within a range including 1-5 or 1-3, as per claims 3 and 17

- Inverse of highest estimated rating i.e. determining the lowest estimated rating subset, as per claims 9 and 15.

Claim Objections

8. **Claims 2, 5** and **7** are objected to because they are dependent upon a rejected

base claim, but may be allowable:

- if rewritten in independent form including all of the limitations of the base

    claim and any intervening claims.

Claim Rejections - 35 USC § 101

9. 35 U.S.C. 101 reads as follows:

    Whoever invents or discovers any new and useful process, machine, manufacture, or composition of
    matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the
    conditions and requirements of this title.

    Claims   1-11 are rejected under 35 U.S.C. 101 based on Supreme Court

precedent, and recent Federal Circuit decisions, the Office's guidance to examiners is

that a § 101 process must (1) be tied to another statutory class (such as a particular

apparatus) or (2) transform underlying subject matter (such as an article or materials) to

a different state or thing. Diamond v. Diehr, 450 U.S. 175, 184 (1981); Parker v. Flook,

437 U.S. 584, 588 n.9 (1978); Gottschalk v. Benson, 409 U.S. 63, 70 (1972); Cochrane

v. Deener, 94 U.S. 780,787-88 (1876).

    An example of a method claim that would <u>not</u> qualify as a statutory process

would be a claim that recited purely mental steps. Thus, to qualify as a § 101 statutory

process, the claim should positively recite the other statutory class (the thing or product)

to which it is tied, for example by identifying the apparatus that accomplishes the

method steps, or positively recite the subject matter that is being transformed, for example by identifying the material that is being changed to a different state.

Here, applicant's method steps, fail the first prong of the new Federal Circuit decision since they are not tied to another statutory class and can be preformed without the use of a particular apparatus. Thus, claims 1-11 are non-statutory since they may be performed within the human mind.

Further Claim 1 is rejected under 35 U.S.C. 101 because the claimed invention lacks tangible result. The preamble of the claim states "a method for determining a sent or taste profile of a user"; however the step of creating the profile is not positively stated in the claim.

Claims 2-11 depend form claim 1 therefore suffer the same deficiency and are rejected for the reason given above.

Claim Rejections - 35 USC § 103

10.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set
> forth in section 102 of this title, if the differences between the subject matter sought to be patented and
> the prior art are such that the subject matter as a whole would have been obvious at the time the
> invention was made to a person having ordinary skill in the art to which said subject matter pertains.
> Patentability shall not be negatived by the manner in which the invention was made.

11.   Claims 1, 3, 6, 8-15 and 17 are rejected under 35 U.S.C. 103(a) as being

unpatentable over Juergens (US Patent 5,200,909) in view of Hillier et al (Introduction to

Operations Research, published 01/1995).

In regards to **claim 1**, Juergens teaches

- storing for each of a set of products chosen among products for which a

  database (fig. 10A) includes smell or taste prints constituted by a set of

  measurements given by smell or taste electronic sensors (col. 4, lines 52-

  61; official notice is taken that smell and electronic sensors were old and

  well known tools used in laboratory measurements), a satisfaction note

  rating (SN) given by the user (col. 10, lines 56-66 where preference score

  is similar to the satisfaction note rating); and

- automatically calculating weighting coefficients constituting said profile

  and respectively affected to said sensors measurements, by successive

  approximation of sets of weighting coefficients (col. 11, lines 44-68 and

  col.12, lines 1-5).

Juergens does not expressly teach

- minimizing the sum of the quadratic errors over the set of satisfaction notes.

Hillier teaches minimizing the sum of the quadratic errors over the set of satisfaction notes (pgs 500-502, 588-590 and 820-826) in an analogous art of operations research for the purpose of finding the best solution for the problem under consideration (pg. 3).

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to use the teachings of Hiller, to minimize the sum of the quadratic errors, in the invention of Juergens because it would have allowed for a purer picture of the preferred user defined product.

In regards to **claim 3 and 17** Juergens teaches preference scores are on a scale of 0-10 (col. 4, lines 61-62) and satisfaction note rating (col. 9, lines 42-51). Juergens does not expressly teach that a satisfaction note rating is a value from 1 to 5 (col. 9, lines 42-51).

Official notice is taken it would have been obvious to one of ordinary skill in the art at the time the invention was made that the scale or weighting could have been in the range of any range including that of 1 to 5 or 1 to 3. Regardless of the magnitude of the scale or weighting factor the process steps are the same therefore the description as claimed is not distinguishable over the prior art.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use a range of 1 to 5 or 1 to 3 in the invention of Juergens to focus the user by reducing the number of preference options.

In regards to **claim 6** and **13** Juergens teaches

- estimating a rating for products for which the database includes the scent or taste prints, by applying the weighting coefficients to the scent or taste prints (col. 5-7); and

- selecting among the products, a subset on the basis of the estimated rating (col. 12, lines 59-64).

In regards to **claim 8** Juergens teaches which the product of said subset is selected for having an estimated rating close to the highest or lowest rating within a predetermined margin (col. 9, line 42-55).

In regards to **claim 9 and 15**, Juergens teaches which a predetermined number of products having the highest or lowest estimated rating constitutes said subset (col. 12, lines 19-25). Official notice is taken that one of ordinary skill in the art at the time the invention was made could have inversely added a subroutine to figure the lowest or least a likely to inform the user of the product which they are least likely to enjoy.

It would have been obvious to one of ordinary skill in the art at the time the invention was made include a subset of the estimate the lowest estimated rating in the invention of Juergens because it would serve as a list of least likely enjoyable products.

In regards to **claim 10 and 14**, Juergens teaches a method applied to perfumes selection, (col. 14, lines, 8-13).

In regards to **claim 11,** Juergens teaches a method applied to wines selection (col. 14, lines, 8-13).

In regards to **claim 12**, Juergens teaches:

- a database containing smell or taste prints of products constituted by a set of measurements given by smell or taste electronic sensors (fig. 10A;

- a memory element for storing a user rating of each of a set of products chosen among the products contained in said database (col.12, line 65-68 and col. 13, lines 1-5);

- a calculator of weighting coefficients constituting said profile and respectively affected to said sensors, by successive approximation of sets of weighting coefficients ((col. 11, lines 44-68 and col.12, lines 1-5).

Juergens does not expressly teaches

- minimizing the sum of the quadratic errors over the set of rating.

Hillier teaches minimizing the sum of the quadratic errors over the set of satisfaction notes (pgs 500-502 and 588-590) in an analogous art of operations research for the purpose of finding the best solution for the problem under consideration (pg. 3).

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to use the teachings of Hiller, to minimize the sum of the quadratic errors, in the invention of Juergens because it would have allowed for a purer picture of the preferred user defined product

12.   Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Juergens (US Patent 5,200,909) in view of Hillier et al (Introduction to Operations Research, published 01/1995) as applied to claim 1 and further in view of Glaser et al (US Patent 7,003, 515).

In regards to **claim 4** Juergens dose teach modifying the rating scores, base on a particular wine (col. 10, lines 59-68 and col. 11, lines 1-7). However Juergens does not expressly teach receiving from the user an additional rating for an additional product selected, on the basis of the already given ratings, as being the product for which the notation of the user will be the most relevant for the user profile.

Glaser teaches receiving from the user an additional rating for an additional product selected, on the basis of the already given ratings, as being the product for which the notation of the user will be the most relevant for the user profile (col. 4, lines 41-58), in the analogous art of creating music play list.

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to use the teachings of Glaser, receiving from the user an additional rating for an additional product selected, on the basis of the already given ratings, as being the product for which the notation of the user will be the most relevant for the user profile, in the invention of Juergens because it allows consumers that have difficulty in finding product they like to find products based on their own taste (Glaser col. 4, lines 52-56).

13.   Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Juergens (US Patent 5,200,909) in view of Hillier et al (Introduction to Operations Research, published 01/1995) as applied to claim 12 above and further in view of Yamafuji et al (US Patent 5,302,262).

In regards to **claim 16**, Juergens teaches wine samples being sent to laboratory for evaluation (col. 4, lines 23-24). Juergens does not expressly teach comprising a smell or taste electronic sensor.

Yamafuji teaches comprising a smell or taste electronic sensor (col. 3, lines 24-27) in an analogous art of taste sensing for the purpose of detecting taste of a plurality of similar samples (col. 3, lines 28-31).

It would have been obvious to a person of ordinary skill in the art at the time of invention was made to use the teachings of Yamafuji, comprising a smell or taste electronic sensor, in the invention of Juergens to detect the taste of samples (col.3, lines 62-64).

Conclusion

14.   Any inquiry concerning this communication or earlier communications from the examiner should be directed to FOLASHADE ANDERSON whose telephone number is (571)270-3331. The examiner can normally be reached on Monday through Thursday 8:00 am to 5:00 pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Beth Van Doren can be reached on (571) 272-6737. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

FAOA

/Andre Boyce/

Primary Examiner, Art Unit 3623